

**Cemetery Board Minutes  
March 10, 2020  
One Commerce Plaza  
99 Washington Ave, Albany, NY 12231**

**BOARD MEMBERS PRESENT:**

Mark Pattison, Department of State, Chair  
Jill Faber, Office of Attorney General  
Thomas Fuller, Department of Health

**OTHER ATTENDEES**

Lewis Polishook, Division of Cemeteries  
Antonio Milillo, Dep't of State, Counsel

Michael Seelman, Division of Cemeteries  
Kerry McGovern, Division of Cemeteries  
Andrew Hickey, Division of Cemeteries

Alicia Young, Division of Cemeteries  
Brendan Stanton, Division of  
Cemeteries

**GUESTS:**

David Fleming, NYSAC, Featherstonhaugh, Wiley & Clyne  
Brendon Boyle, NYSAC, FWC  
Bruce Geiger, Bruce Geiger & Assocs. for Pinelawn Memorial Park

**Opening Remarks**

**20-03-A-12 Minutes of Previous Meeting**

Motion made, seconded, and unanimously adopted approving as submitted the minutes of the Board's February 11, 2020 meeting, without change.

**20-03-B--13 Legislation and Regulations**

1. Pending Legislation

Counsel gave an update on legislation: Assembly 887, Senate 2033, pertaining to establishment of a veteran cemetery, "notice of committee consideration" requested in Senate.

Assembly 3429-A, Senate 4284-A: cemetery disclosure form, has been passed in the Senate and is referred to the Assembly.

Senate 1167, which was a one House bill, has become a two House bill and is now also Assembly 9808.

Senate 5463, Assembly 7651 is a NYSAC promoted bill that deals with spending a portion of net appreciation. It has advanced to the third reading in the Senate, no action as of yet in the Assembly.

Senate 7155, Assembly 9089, is also NYSAC promoted and addresses the merger issue that arose with Forest Lawn Cemetery, and would reinterpret guidelines for acquisition of land by a cemetery. It has passed in the Assembly and has been delivered to the Senate for consideration.

## 2. Rules and Regulations

Mark Pattison spoke briefly about the regulations concerning abandonment and best practices in the process of abandonment, in response to Governor Cuomo's recent veto of abandonment legislation. Lewis Polishook updated the Board about bullet points the Division and counsel have prepared to restate, and ultimately codify, the process that has worked to prevent abandonments, so that the Division can help to prevent future abandonments, if possible. Mr. Polishook stated the process could be broken down into different phases: phase one, pre-abandonment process; phase 2, the procedure of abandonment, after it is firmly established that nothing else can be done to prevent the abandonment; phase 3, differentiating the type of abandonment, that is, abandonment of one cemetery to another cemetery vs. abandonment of a cemetery to a municipality. Mr. Polishook mentioned that recently the Division had become aware that several abandonments had occurred without the Division's knowledge, and the Division was made aware only after response to a mailing to cemeteries regarding delinquent reports. The Division needs to know in advance when a cemetery is at risk, in order to meet with them and go over the options and established processes and try to help them as much as possible, making sure they are up to date on financial filings, helping come up with a plan for staffing and groundskeeping costs, go over income and expenses, fundraising, and all possible options, hopefully preventing abandonment. Mr. Polishook stated that at this point an audit should be done in order to best assess the cemetery's financial state, and the possibility of board reorganization should be discussed. If the cemetery is found to be truly at risk, the town should be notified within a week. Within a month of this, an announcement should be made for a special reorganizational meeting of lot owners with an agenda specific to abandonment and the meeting should be properly noticed. Before the meeting the Division should complete an audit, an inspection, and be in steady contact with the municipality. The town should be assured that the Division has exhausted all options before the cemetery is actually abandoned to the town. The meeting should occur within three months of notifying the town.

Counsel added that the Board should be put on notice of special meetings concerning possible abandonment for greater publicity.

The Board discussed the issue of who would run a special meeting in the absence of a cemetery board to run the meeting, and the related issue of how such meetings can be conducted in the absence of a board or bylaws. The Division suggested that, for purposes of the special meeting, it might be possible to look to the general provisions of the Not-for-Profit Corporation Law and sample bylaws for guidance. Mr. Polishook noted that once a board is elected, the board can adopt bylaws and notice a new annual meeting.

Lewis Polishook also stated that the Division will be compiling a list of cemeteries by town, and then contacting each to let them know which regulated cemeteries are within their municipality and offering assistance if needed.

#### **20-03-C-14 Division Report**

1. Annual report update:

450 annual reports have been received this year so far, with more expected by the end of this month. 147 of those annual reports received were filed online, which is an increase over last year's filing. The new software is more user-friendly, but you cannot save your work so it needs to be completed in its entirety in one session.

2. Corona Virus Covid-19 protocol:

Lewis Polishook stated that the Division will be putting out guidelines regarding Covid-19, but will, of course, defer to both, the Department of Health and the CDC and OSHA. The infectious disease protocol for crematories included in the Division-approved crematory operator training course provides useful guidance for cemeteries and crematories handling remains and is included in the new guidance. The guidance will be posted on the Division of Cemeteries website, with a link to OSHA's guidance on handling deceased individuals. Guidelines would include wearing protective clothing, gloves, thoroughly cleaning work areas, avoiding airborne particles, and cremating bodies as soon as possible. Precaution should be taken if any container must be opened prior to cremation for any reason, along with established authorizations being in place.

3. Staffing update:

Cindi Craig, retired Investigator for the Division of Cemeteries in Western New York, will be working part time in the Buffalo office and handling investigatory duties in that area of New York State. Also, lists of candidate names will be obtained for two open accounting positions in the Albany office. Waivers have been sought by the Division in order to fill empty investigator positions.

4. NYSAC regional meetings:

The Division will be sending representatives to two regional NYSAC meetings prior to the annual NYSAC policy conference in Albany in May. The meetings are April 29 in Rochester, and April 30 in Syracuse.

#### **20-03-D-15 Vandalism, Abandonment and Monument Repair or Removal Fund Report**

##### **Vandalism/Abandonment/Repair Orders-7**

Motions were made, seconded, and unanimously adopted approving the following:

1. Pratt Cemetery (04-026) Broome County: application by Town of Colesville for maintenance of this abandoned cemetery, approved in the amount of \$88,265.00
2. Plymouth South Side Cemetery Association (09-024) Chenango County: application for repair of 56 dangerous monuments approved in the amount of \$36,687.53

3. Walton Cemetery (13-048) Delaware County: application for repair of 41 dangerous monuments approved in the amount of 29,298.95
4. Britton Road Cemetery (28-046) Monroe County: application for repair of 96 dangerous monuments approved in the amount of \$68,628.56
5. Fly Creek Cemetery (39-011) Otsego County: application for repair of 27 dangerous monuments approved in the amount of \$23,729.74
6. Woodstock Cemetery (56-038) Ulster County, application by Town of Woodstock for maintenance of this abandoned cemetery approved in the amount of \$206,013.18
7. Otego Evergreen Cemetery Association (39-028) Otsego County: application for repair of dangerous monuments approved in the amount of \$516.40, as a price adjustment to the original approved order, because their lowest bidder is no longer willing to perform the work at the previous bid price.

Lewis Polishook spoke briefly about the budget for the coming fiscal year and secondary payments still to be made on several previous Vandalsim/Abandonment/Monument Repair applications. These payments will cause the Division to start the fiscal year with approximately \$500,000 committed. The Governor's budget proposal contains \$2 million for the fund.

Counsel raised an issue about the time elapsed concerning the application by the Town of Colesville for funds to maintain Pratt Cemetery. Mr. Polishook explained that, although the abandonment occurred in 2013, the Town did not submit its application until 2018 and it was not complete until February 2020.

Ms. Faber raised a question concerning the equipment to be purchased by the Town of Woodstock, and whether the Town's purchases were made at Office of General Services prices. Discussion ensued about how the Division can verify that such purchases not exceed OGS pricing.

#### **20-03-E-16 Glenwood Cemetery (32-008) Columbarium Application**

Michael Seelman stated that Glenwood Cemetery is putting in a 250 niche columbarium. Relatives of a board member donated the columbarium; the total cost to the cemetery will be approximately \$1,000 for installation and \$112 in annual selling expenses, **all of which come from the cemetery's general fund**. The project is anticipated to be profitable. They do not have any columbarium but feel that there is need for one in the area. The notice was posted in January. Counsel had questions regarding financials of the cemetery and net income losses. The Division explained that the cemetery had experienced mismanagement in the past, but that a new board was in place and they are committed to improving finances. Because the columbarium is being donated, sales will necessarily generate a profit. After discussion, motion was made, seconded, and unanimously adopted approving the application.

#### **20-03-F-17 North Syracuse Cemetery (34-033) Columbarium Application**

North Syracuse wishes to install a 64 niche columbarium. They have three columbariums at present and there is great and demonstrated need for more niche space. **The total cost to the cemetery will be \$37,550 from the Cemetery's general fund**. The application was submitted in Autumn of 2019 but notices were not posted, so it is going before the board in March 2020. Counsel expressed concern regarding the wording and lack of specification in their notice and stated that going forward the cemetery should include more information in

their postings. After discussion, motion was made, seconded, and unanimously adopted approving the application. The Division anticipates

### **20-03-G-18 Mount Hope Cemetery (60-013) Mausoleum and New Section**

Mount Hope Cemetery wishes to install a new mausoleum in an area that is very rocky and not suitable for in-ground burial, and they also wish to develop a new section, 1 ½ acres in area, in an area that is suitable for burial. The areas would be in an area with higher elevation than most of the cemetery and would afford good views to visitors, which would be a good marketing point. The application covers both the mausoleum installation and the development of the new burial section. The total cost of the project is \$8,324,920, **all of which will come from the Cemetery's general fund.** Questions regarding the itemization and financing of both sections of this application were addressed. After discussion, motion was made, seconded, and unanimously adopted approving the application.

### **Public Comment**

David Fleming addressed the Board and thanked the Board and the Division for transparency regarding abandonment language and processes. He also touched on new DEC requirements for crematory operations and what he characterized as DEC's lack of transparency regarding those requirements. Mr. Fleming stated that new DEC regulations would eliminate approximately 30 percent of all crematory retorts in New York State, which would cause more funeral directors to cremate outside of New York State, in states that do not have the same regulations regarding cremation in place. He asked that the Division review DEC responses.

Mr. Fleming went on to say that Whispering Maples Cemetery Association was formally dissolved, with an April 28<sup>th</sup> hand-over, implemented in stages. Ellenburg will assume crematory operations, and the town of Plattsburgh will take over the running of the cemetery.

The March meeting of the New York State Cemetery Board was adjourned, 12:55 PM There was no need for an Executive Session.

The next meeting is scheduled for April 14, 2020, at 10:30 a.m., at One Commerce Plaza, Room 1112, Albany, New York 12231.